

Respondent constructs prefabricated steel buildings. In August 1995, claimant began working for respondent as a steel erector. While hanging steel on a building respondent was constructing in Lindsborg, Kansas, claimant began experiencing symptoms in his right shoulder. The symptoms began without the occurrence of a sudden, traumatic event. Claimant believes he began experiencing those symptoms sometime during the first six months of 1996.

Despite his shoulder symptoms, claimant continued to work for respondent at his regular job. His symptoms progressively worsened through February 5, 1997, when claimant left work for medical treatment, which included arthroscopic shoulder surgery to repair a torn rotator cuff. Claimant's doctors have advised him the rotator cuff tear was probably caused by overuse.

The Appeals Board finds claimant sustained repetitive microtraumas through the period of alleged accident, April 1996 through February 5, 1997, as claimant performed his regular work duties during that period and sustained cumulative injury. The Appeals Board finds claimant's accidental injury was caused by the work activities he was performing for respondent and that the accidental injury arose out of and in the course of claimant's employment with respondent.

The Appeals Board also finds claimant provided respondent timely notice of accident. The appropriate date of accident for claimant's cumulative injury is February 5, 1997, the last day claimant worked before leaving work for surgery. On January 31, 1997, claimant notified respondent of his shoulder injury and related it to his work activities. Before that date, claimant had advised respondent he was experiencing shoulder difficulties but he failed to relate the symptoms to his work.

Although claimant initially related the shoulder problem to a specific incident which allegedly occurred at work in April 1996, the notice was sufficient under K.S.A. 44-520 to alert respondent to a work-related accident and permit respondent to investigate the accidental injury, including the question whether claimant sustained additional injury as a result of his work activities after the date of the specific incident.

When dealing with injuries which are caused by overuse or repetitive microtrauma, it is sometimes difficult to determine the injury's etiology, and it is often difficult to determine the injury's commencement and conclusion. In those situations, injured workers should not be held to absolute precision when considering the notice requirements of K.S.A. 44-520. Rather, the test should be whether the employer was placed on reasonable notice of a work-related injury.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish, dated June 19, 1997, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1997.

BOARD MEMBER

c: Brian D. Pistotnik, Wichita, KS
Ronald J. Laskowski, Topeka, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director